

§ 20.603

33 CFR Ch. I (7–1–98 Edition)

(1) The documents and exhibits that the party or interested person intends to introduce into evidence;

(2) The identity of each person expected to be called as a witness, the subject matter on which the person is expected to testify, and a summary of the testimony; and

(3) Any information previously provided if—

(i) The party or interested person knows the information was incorrect or incomplete when made; or

(ii) The party or interested person knows that the information, though correct when made, is no longer accurate and the circumstances are such that a failure to amend or supplement the response is, in substance, a knowing concealment.

(b) An additional duty to amend or supplement may be imposed by order of the Administrative Law Judge.

§ 20.603 Interrogatories.

(a) Any party requesting interrogatories shall make a motion to the Administrative Law Judge. The motion must include—

(1) A statement of the purpose and general scope of the interrogatories; and

(2) The proposed interrogatories.

(b) The Administrative Law Judge will review the proposed interrogatories and may enter an order approving the service of some or all of the proposed interrogatories or may deny the motion.

(c) A party shall serve on the party named in the interrogatories the approved written interrogatories.

(d) Each interrogatory must be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for the objection shall be stated instead of a response. A party, the party's attorney, or the party's representative shall sign the party's responses to interrogatories.

(e) Responses or objections must be filed within 30 days after the service of the interrogatories.

(f) If the response to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served, from an examination, audit, or inspection of

such records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the response is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient response to specify the records from which the answer may be derived or ascertained. The party serving the interrogatory shall be afforded reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries. The specification must include sufficient detail to permit the interrogating party to locate and identify the individual records from which the answer may be ascertained.

§ 20.604 Requests for production of documents or things for inspection or other purposes.

(a) Any party requesting production of documents or things for inspection or other purposes shall make a motion to the Administrative Law Judge. The motion must state with particularity—

(1) The purpose and scope of the request; and

(2) The documents and materials which are requested to be produced.

(b) The Administrative Law Judge will review the motion and may enter an order approving or denying the motion in whole or in part.

(c) A party shall serve on the party in possession, custody or control of the documents the order to produce, or to permit inspection and copying of documents.

(d) A party may, after approval of an appropriate motion by the Administrative Law Judge, inspect and copy, test, or sample any tangible things that contain or may lead to relevant information and that are in the possession, custody, or control of the party upon whom the request is served.

(e) A party may, after approval of an appropriate motion by the Administrative Law Judge, serve on another party a request to permit entry upon designated property in the possession or control of the party upon whom the request is served for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object

or area. A request to permit entry upon property must set forth with reasonable particularity the item to be inspected and must specify a reasonable time, place, and manner for making the inspection and performing the related acts.

(f) The party upon whom the request is served shall respond within 30 days after the service of the request. Inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for each objection must be stated.

§ 20.605 Depositions.

(a) The Administrative Law Judge shall order depositions only upon a showing of good cause and upon a finding that—

(1) The information sought cannot be obtained more readily by alternative methods; or

(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(b) Testimony may be taken by deposition upon approval of the Administrative Law Judge of a motion made by any party.

(1) The motion must state—

(i) The purpose and scope of the deposition;

(ii) The time and place it is to be taken;

(iii) The name and address of the person before whom the deposition is to be taken;

(iv) The name and address of each witness from whom a deposition is to be taken;

(v) The documents and materials which the witness is requested to produce; and

(vi) Whether it is intended that the deposition be used at a hearing instead of live testimony.

(2) The motion must state if the deposition is to be by oral examination, by written interrogatories, or a combination of the two. The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(c) Upon a showing of good cause the Administrative Law Judge may enter

and serve upon the parties an order to obtain the testimony of the witness.

(d) If the deposition of a public or private corporation, partnership, association, or governmental agency is ordered, the organization named must designate one or more officers, directors, or agents to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. Subject to the provisions of 49 CFR part 9 with respect to Coast Guard witnesses, the designated persons shall testify as to matters reasonably known to them.

(e) Each witness deposed shall be placed under oath or affirmation, and the other parties shall have the right to cross-examine.

(f) The witness being deposed may have counsel or another representative present during the deposition.

(g) Except as provided in paragraph (n) of this section, depositions shall be stenographically recorded and transcribed at the expense of the party requesting the deposition. Unless waived by the deponent, the transcription must be read by or read to the deponent, subscribed by the deponent, and certified by the person before whom the deposition was taken.

(h) Subject to objections to the questions and responses as were noted at the time of taking of the deposition and which would have been sustained if the witness were personally present and testifying, a deposition may be offered into evidence by the party taking it against any party who was present or represented at the taking of the deposition or who had notice of the deposition.

(i) The party requesting the deposition shall make appropriate arrangements for necessary facilities and personnel.

(j) During the taking of a deposition, a party or the witness may request suspension of the deposition on the grounds of bad faith in the conduct of the examination, oppression of the witness or party, or improper questioning or conduct. Upon request for suspension, the deposition will be adjourned. The objecting party or witness must immediately move the Administrative Law Judge for a ruling on the objection(s). The Administrative Law Judge